UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2001/SR.16
16 August 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 10 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/2001/SR.16/Add.1.

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GE.01-15073 (E) 130801 160801

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(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

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The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15, 16, 18, 19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6; E/CN.4/Sub.2/AC.4/2001/4 and 5; E/CN.4/Sub.2/AC.5/2001/2 and 3; E/CN.4/Sub.2/AC.5/2001/WP.2, 3, 4 and 6; E/CN.4/2001/85)

1. Mr. WAIDANDEY (World Federation of Trade Unions) said that the cause of the Dalits was not advanced by applying the racism label to their problems. The solution lay in the creation of a casteless society, as envisioned by the framers of the Indian Constitution, who had initiated a programme of affirmative action to change structures and attitudes. Untouchability had been abolished and declared a crime. Action had been taken to facilitate the access by members of the scheduled castes and scheduled tribes to education and government employment. Dalits had formed some of the most active political parties in India and members of the scheduled castes and scheduled tribes accounted for almost one quarter of the members of the National Parliament. Access to government higher education scholarships had increased dramatically and literacy rates among Dalits of both sexes had improved. Intercaste marriages were no longer taboo.

2. Affirmative-action programmes had to be tailored to the circumstances of each society. Discrimination in India was rooted in a lack of education and the determination to preserve vested economic interests. Caste oppression was therefore more common in rural than in urban areas. A conference declaration that attributed caste oppression to racism or discrimination based on descent and occupation would be of little use to a poor Dalit in a remote Indian village, but a fraction of the resources that were being generated to present the Dalit case in international forums would make a marked difference to the life of a Dalit child.

3. The problem in countries such as India that had well-established affirmative-action programmes was the resentment they generated among non-target groups, a resentment which sometimes manifested itself in violence against the beneficiaries. The remedy did not lie in summit meetings or declarations but in concerted action at home to change attitudes, to ensure that programmes and laws were faithfully implemented and to demonstrate the worthwhile contribution that the beneficiaries of affirmative action were making to society.

4. Ms. OLIVER (European Union of Public Relations) said that all discrimination that segregated human beings on the basis of race, colour, origin, ethnicity or religion was discrimination based on descent. The battle against discrimination was being distorted by the invention of new terminology that served the political and economic interests of particular groups. The solution lay in creating constitutional, legal, institutional and other structures that

promoted equal treatment. Discrimination based on occupation also occurred at every level in every society. Dalits in India chafed against the caste system that denied them equality based on merit but castes of a different nature, such as the House of Lords in the United Kingdom or the Ivy League universities in the United States, existed in every society. While India had elected a Dalit President, the United States had yet to elect a black President.

5. Her organization had serious misgivings about the group-specific declarations that some non-governmental organizations (NGOs) were seeking to formulate for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. There was no point in citing group-specific statistics of discrimination or violence. The process of empowerment of those who suffered discrimination must be initiated within each society. Education to change attitudes and political and economic development were the basic ingredients for empowerment. The Dalits in India were able to fight against discrimination within the democratic framework of their country, but victims of discrimination in non-democratic countries were denied that strategy. The World Conference should focus on the plight of such people rather than squander resources on groups that were able to fight for their rights in democratic societies.

6. Mr. GUISSÉ encouraged Mr. Goonesekere to pursue the study he had begun in the working paper on discrimination based on work and descent (E/CN.4/Sub.2/2001/16). Traditional forms of discrimination such as the caste system, which were deplored, had become entrenched in societies and in people's minds over a very long period. A study of the issue was certainly useful, but he agreed with the representative of the European Union that age-old discriminatory practices could not be wiped out by laws, treaties or declarations. That kind of approach was ill-founded and was likely to meet with incomprehension or even to generate conflict.

7. As castes were a source of discriminatory practices throughout the world, no study of the subject should be confined to a single region. In addition to listing caste-related practices, it should record the efforts being made to eradicate those practices. Some countries had enacted legislation, promoted awareness campaigns and spent large sums of money seeking to ensure equality of treatment. India, for example, in its efforts to eliminate discrimination, had taken affirmative action to accelerate the process.

8. Affirmative action was not always the best policy choice, however. The best way of fighting discrimination was to promote education and enhance awareness. Children should be told that such practices stemmed solely from such incidental factors as a person's birth or occupation and that they impeded a society's economic and social development. They should be assured of their equal status and of the fact that, in a democratic society, they had every opportunity to advance by virtue of their own efforts. Students at all levels of the education system should be taught to respect the principle of equality, in society and before the law. NGOs should inform local communities in which discriminatory traditions survived that such practices belonged to the past and were an obstacle to development.

9. Deterrence through legislation and enforcement by the courts should contribute to the education of society. Legal proceedings should serve as a training course for those involved. The entire anti-discrimination strategy should, in short, be based on the transmission of knowledge.

10. Mr. van HOOF expressed appreciation of the contribution made by the observer for India at the previous meeting and the written material she had circulated regarding the background to the issue under discussion and the various sensitivities involved.

11. When the Sub-Commission had decided to take up the difficult issue of discrimination based on work and descent, the fact that the study had been entrusted to a man of unimpeachable integrity had set his mind at ease. Mr. Goonesekere had displayed that integrity both in the working paper itself and in his oral presentation, when he had admitted its limitations. That was the crux of the matter: the severe restrictions imposed by the complexity of the subject and the difficulty of obtaining reliable information. It was unfortunate that the observer for India should have thought that her country was being specifically targeted. In that connection, he agreed with Mr. Pinheiro that, notwithstanding the controversy generated by the topic, it should be kept on the agenda and followed up by Mr. Goonesekere, who would, he hoped, be given every assistance, not least by the Government of India.

12. Mr. ALFONSO MARTÍNEZ, referring to Mr. Goonesekere's excellent summary of the contents of his working paper at the previous meeting, said he had been struck by its regional nature: it focused on countries in the Asian region and first and foremost India. He cautioned against any infringement of the Commission's instruction to refrain from referring to situations in individual countries. Mr. Goonesekere admitted in paragraph 49 that the focus had been on countries in Asia and that he had been unable to cover the situation in other parts of the world such as parts of Africa and South America because of time constraints. The geographical scope of the study should be universal, since the phenomenon it addressed occurred in every region. Descent determined, prior to birth, the social class to which a person belonged. The children of a millionaire had every chance of becoming millionaires too.

13. It had become clear at the previous meeting that diverse criteria were being applied to the topic. He had approached the observers of both India and Japan for information and both had responded generously. The fact was that neither country had sought to conceal the nature or scale of the problem. Their positive attitudes and strenuous efforts to address a very complex phenomenon, which could not be remedied solely through legislation such as the Constitution of India, should be taken into account. He therefore proposed that consideration of the topic should be deferred, giving the Sub-Commission time to reflect on what its future approach might be. He would support a draft resolution to that effect.

14. Mr. OLOKA-ONYANGO, having expressed his appreciation for the balanced approach that the Special Rapporteur had adopted to the subject of the working paper (E/CN.4/Sub.2/2001/16), said that he was rather concerned about the trend of the discussion and disconcerted that some members of the Sub-Commission should question whether the study belonged under agenda item 5 and whether it should be discussed at the World Conference. In the introduction to his study, Mr. Goonesekere had cited no less than six international instruments to uphold its relevance under both headings.

15. He understood that the Special Rapporteur's analysis was substantially the same as that of the observer for India, whom the Sub-Commission had heard the previous day. Both analyses

underlined the fact that, in India, much had been done to address the issue more than in any other country mentioned in the report. The problem remained a serious one, however, not only in India but in all the other countries cited in the report and in many other countries around the world.

16. There were elements that were very reluctant to discuss the main subject of the World Conference: racism and its insidious effects on people mainly of African descent. At the beginning of the session, the Sub-Commission had shown a remarkable unanimity in speaking out against that attempt at censorship. It had also sent a clear message to those who sought to silence the discussion on reparations and compensation: that the Sub-Commission was a body established to promote and protect human rights and to give a voice to the voiceless.

17. He had read the working paper very carefully. It identified a complex problem, suggested a reasonable method for continuing its consideration and clearly showed that the issue could not simply be shelved, as some members of the Sub-Commission had suggested. Since the Sub-Commission had given Mr. Goonesekere the mandate to examine the subject, it should respect his conclusions.

18. In the last analysis, the issue that was the subject of the Special Rapporteur's study would be discussed at the World Conference with or without the agreement of the members of the Sub-Commission. The working paper should be given much further consideration and should be expanded to include other countries. Only then could it be maintained that the Sub-Commission remained consistent in the execution of its mandate.

19. Mr. PREWARE said that the working paper represented a pioneering effort, because it was the Sub-Commission's first attempt to study and discuss what was basically a social issue that gave rise to feelings of disadvantage and discrimination among certain minority populations, not only in Asia but elsewhere also.

20. It was not necessary to debate whether the situation originated centuries previously or decades previously. Similarly, the position of the Sub-Commission should not be determined by the question whether the discrimination inherent in social attitudes towards a class or a caste qualified as racial or non-racial discrimination. The only question that should be asked was whether the attitude of society in any given country entailed disadvantages deriving from the descent or traditional occupation of those who belonged to the castes identified.

21. The statements made by members of the Sub-Commission and the observer for India clearly acknowledged the existence of both a situation of social discrimination and very energetic affirmative action initiatives by the Governments to address the problem by systematically adopting and implementing policies that progressively gave the disadvantaged better education and access to all types of work and political office. It was pertinent to recognize two points: namely, the positive and continued commitment of the Governments to affirmative action and the fact that the study was incomplete and could benefit from the information available in India and other countries. It would therefore be useful if Mr. Goonesekere were to complete his study.

22. However, he questioned the advisability of the Sub-Commission recommending to a world conference a subject on which it had not completed its own study.

23. Mrs. DAES said that the report covered a very complex issue and she shared the views expressed by Mr. van Hoof and Mr. Oloka-Onyango. She had greatly appreciated the statement made by the observer for India the previous day, which provided useful information about the caste system as it was applied in India. The Sub-Commission had the obligation to listen to the views of Governments and take them into account in their reports. She therefore recommended that the Special Rapporteur should take note of the material submitted by the Government of India and should enter into a dialogue with its representative before submitting his next report.

24. Mrs. WARZAZI said that she shared the opinion of other members of the Sub-Commission that the Special Rapporteur had shown great courage in agreeing to study a very complex issue in India and other countries of the region. Considering that he was discussing his own country among others, his report showed a commendable concern for impartiality. It was clear that the issue of discrimination based on work and descent was a significant problem in India, particularly in view of the size of the country's population. It was noteworthy that the Government of that country was very much aware of the problem and appeared to have the political will to resolve it. However, discrimination based on work and descent was prevalent not only in Asia but also in other continents and the report would be enhanced if its scope were expanded to reflect the problem at the global level.

25. She proposed that the Sub-Committee should adopt a draft resolution congratulating the Special Rapporteur, encouraging him to continue his study and expand it to other countries and other continents, and deciding that the working paper should remain within the Sub-Commission until that work had been completed. Although the issue would clearly be raised at the World Conference by the NGOs the Sub-Commission could not sponsor it when it had not completed its examination thereof.

26. Mr. FIRMAGE (Association of World Citizens) said that, while he greatly respected the Chinese people for the civilization, culture and spiritual power that they had bequeathed to the world, China, one of the largest civilizations on the planet, was currently threatening the survival of one of the smallest and most fragile of peoples, that of Tibet. It was imprisoning, torturing and killing thousands of Tibetans each year, while also destroying their culture and religion.

27. The United Nations was the last hope for many indigenous peoples who were persecuted by allegedly superior cultures and threatened with extinction. He therefore called on the Government of China to examine the interests it had in common with the Government-in-exile of the Dalai Lama, for the latter personified the essence of humanitarian ethics and represented a more appropriate path to follow than the road to consumerism.

28. Ms. LENNOX (Minority Rights Group International) said that a forthcoming report by her organization characterized the approach of the United Nations to the issue of discrimination on the grounds of work and descent as "selective perceptions, tepid reactions and token gestures". The list of human rights violations suffered by groups subjected to such discrimination was abhorrent and well-documented and a wide range of treaty bodies and special mechanisms existed to cover all such abuses. However, the United Nations had been less than

consistent in acknowledging the particular susceptibility to such violations of those at the bottom of the social hierarchy throughout the world. Furthermore, given the disproportionate number of low caste menial workers, as well as more general caste-based restrictions on employment, it was surprising that the International Labour Organization (ILO) had understated caste vulnerability.

29. Many of the countries where discrimination based on work and descent existed had recently been examined by treaty bodies, without the question of work and descent being discussed. Consequently, her organization welcomed Mr. Goonesekere's working paper, which drew attention to the global issue of work and descent and provided an excellent start to wide-scale acknowledgement within the United Nations of the estimated 250 million people who had inherited a life without dignity.

30. It was imperative that States should be urged to include the issue of discrimination based on work and descent in the declaration and programme of action of the World Conference. Its inclusion could signal the start of a truly consistent, integrated approach to tackling that injustice within the United Nations. Should that opportunity be missed the international community would have turned its back on the voiceless.

31. Mr. MADELIN (International Federation of Human Rights Leagues), speaking also on behalf of the Lutheran World Federation, said that he welcomed the adoption by the Sub-Commission of the resolution on the recognition of responsibility and reparation for massive and flagrant violations of human rights which constituted crimes against humanity and which had taken place during slavery, colonialism and wars of conquest, for submission to the World Conference.

32. Racism currently took many forms and there were also numerous international standards and mechanisms dedicated to combating it. It was deplorable, however, that, 10 years after its adoption, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had still not come into force and that only one European State had ratified it. Immigration was a growing universal phenomenon and immigrants were discriminated against in all parts of the world; accordingly, special attention should be paid at the World Conference to the issue of their protection.

33. The evolution of racism over recent decades had added a cultural dimension and confirmed that the definition of racial discrimination in international law could not be restricted to discrimination based purely on physical characteristics, but should encompass descent or national or ethnic origin, nationality and, perhaps, even religion or language. The use of the word "race" itself was inadequate. The difficulty in delimiting the frontiers of racial discrimination, as opposed to other forms of discrimination, was due to the interrelationship of all forms of discrimination and the existence of multiple discrimination. It was not possible to tackle the question of contemporary racism without including the issue of cultural, religious, economic and social discrimination.

34. Consequently, groups that were victims of discrimination based on work or descent or because they belonged to a caste discrimination, which was widespread in the Indian sub-continent, Japan, sub-Saharan Africa and countries where there were large populations of

migrants from those regions, should not be denied the possibility of claiming "racial discrimination". In that respect, the Special Rapporteur was to be thanked for the work he had carried out on that form of discrimination and the Sub-Commission encouraged to continue the study.

35. No action against racism and racial discrimination could succeed if fundamental human rights were not respected. The principle of non-discrimination was the vector of the principle of the universality of human rights. It was important that the intimate connection between poverty and racial discrimination should be brought to light and, following the World Conference, should lead to a real commitment to develop standards and mechanisms on economic, social and cultural rights. As always, it was necessary to engage the political will of the States at the World Conference so as to ensure that they responded adequately and positively to the challenges posed.

36. Mr. HARMISON (Art of Living Foundation) said that Indian society, like many others, was stratified, and contained economic, social, cultural and educational hierarchies. However, India was grappling with the problem of discrimination, notably by implementing affirmative action policies and reservation policies in favour of the Dalits. The result of those policies was that many Dalits had attained high positions within their own country, and others had benefited from advanced technical training to obtain employment in the United States and elsewhere. On the other hand, the poor of other castes who were not eligible for assistance under such programmes still suffered from discrimination. He believed it was the responsibility of a State to enact and enforce laws which protected and promoted the well-being of all of its people, rather than that of a single group.

37. Mr. BENNET (Afro-Asian Peoples' Solidarity Organization) said that discrimination based on descent and occupation was an evil that was not confined to developing countries, but was also found in developed countries with high levels of literacy and awareness. The major portion of the report dealt with India but it should be remembered that, at a time when Gandhi was struggling to rid that country of untouchability, Germany was trying to eradicate a whole race on grounds of descent. The report rightly highlighted the many constitutional, legal and institutional measures that independent India had enacted to remedy the discrimination suffered by the underprivileged sectors of its society, and notably the Dalits. If the situation was still far from perfect, it was not for lack of good intentions on the part of the State, but rather for lack of economic and educational development, particularly in the rural areas. The only way to tackle the problem of caste-based discrimination - which continued to afflict not only Hindu but also Christian and Muslim communities in India - was through sustained programmes designed to bring about economic and educational advancement.

38. The best way for the international community to support those countries which were doing their best to tackle the problem of discrimination was to encourage their efforts and to provide them with the resources needed for effective implementation of the measures they had enacted.

39. Mr. SORABJEE said that for centuries the scheduled castes and tribes currently known as Dalits had suffered intensive social and economic discrimination and, as a result, had suffered severe handicaps, particularly in the fields of education and the public service. Accordingly,

affirmative action measures had been included in the Indian Constitution, reserving places for Dalits in Government employment and in educational institutions. Seats had also been reserved for them in the lower House of Parliament and in the state legislatures. It had originally been stipulated that those reservations should expire after 10 years, but the Constitution had subsequently been amended to extend them for a further 60 years.

40. In addition, a national commission for scheduled castes and tribes had been set up to inquire into specific complaints by Dalits of infringements of their rights. In the year 2000, 1,294 complaints had been received, and action had been taken in the majority of cases. The increase in the number of jobs reserved for Dalits had been challenged in the courts: eventually, the Supreme Court of India had ruled that reservation in respect of recruitment should not exceed 50 per cent and that there should be no reservation in respect of promotion. However, in order to protect and promote the rights of the Dalits, the Constitution had been amended in such a way as to neutralize that ruling to some degree. For instance, the system in force in the State of Tamil Nadu, which provided for a reservation of 69 per cent, had been allowed to continue.

41. The Constitution further provided that, when appointments to the public service were being made, the claims of scheduled castes and tribes should be taken into account to the extent consistent with the efficiency of the public administration. There was even a provision for a relaxation of standards in favour of Dalit candidates in entrance examinations, a provision which had given rise to a number of complaints of reverse discrimination.

42. The practice of untouchability had been made a criminal offence under the Constitution, and was punishable by a prison sentence or forfeiture of property. A large number of special courts had been set up to deal with such offences: in 1996, 1,827 people had been convicted and in 1997, 2,017.

43. Reference had rightly been made to the dehumanizing practice of confining certain groups to scavenging work. However, a Government scheme had been set up for the liberation and rehabilitation of scavengers and their dependants. A finance development corporation had been formed to provide credit at concessionary rates in order to ameliorate the plight of the scheduled castes. Although discriminatory practices regrettably did persist, due to failure to enforce the relevant legislation, the political will to deal with the problem was there.

44. India had a free and independent press, which exposed and condemned discriminatory practices whenever they occurred. Dalits were entitled to organize conferences and seminars at which to air their grievances, and there was a national human rights commission to investigate complaints. He was glad to note that paragraph 23 of the working paper stated that credit should be given to the Government of India for the improvements it had introduced, and he was sure that, with continuing efforts, further progress would be made.

45. Mr. KHAN (Observer for Pakistan) said that one of the basic tenets of Islam was that all human beings were equal, and Islam abhorred untouchability or discrimination based on caste, race or creed. The Constitution of Pakistan provided that all citizens were equally entitled to the protection of the law.

46. He could not endorse the conclusions reached in paragraph 43 of the working paper. In addition, he questioned the figures quoted in paragraph 44 concerning the extent of bonded labour in Pakistan. Account should have been taken of the measures currently being adopted by his Government to combat the problem, notably by a National Plan of Action for the abolition of bonded labour and the rehabilitation of freed bonded labourers. That plan included awareness-raising, advocacy, vocational training, promotion of the right to organize, the creation of opportunities for self-employment and the setting up of a legal aid centre. The Government had also decided to ratify ILO Convention No. 100, on Equal Remuneration, and ILO Convention No. 182 on the Worst Forms of Child Labour.

47. Ms. FEENY (Observer for Malaysia), referring to Mr. Goonesekere's comments the previous day concerning the situation of Indians in Malaysia, said that the caste system did not exist in her country. There was no discrimination based on work or descent, and all Malaysians had equal opportunities and equal access to education and employment. Indians in Malaysia had been thoroughly assimilated and had shown themselves as capable as any other Malaysians of climbing the social ladder. Many of them currently held senior positions in Government departments, the police and the army, and many others were successful businessmen and entrepreneurs. She urged that such facts should be taken into account when judging the situation in Malaysia, in order to avoid possible misconceptions.

48. Mr. GOONESEKERE welcomed the comments made on his working paper (E/CN.4/Sub.2/2001/16). He emphasized that, because of the limited time available, he had not been able to give the subject the extensive consideration that it merited. He had not envisaged his study as having any relationship to the forthcoming World Conference; it had been mandated by the Sub-Commission and it was for the Sub-Commission to decide how its findings were to be used. He was also fully aware that the issue needed to be looked into in the context of other countries besides those of Asia and Africa. Some speakers had made the point that the report should have included more official information supplied by Governments: he pointed out that he had in fact solicited such information from the Government of India, but none had been received.

49. While he regretted certain of the statements made by the observer for India, he would not respond, since he did not wish to jeopardize his cordial relations with the Government of that country.

The public part of the meeting rose at 12.15 p.m.